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IN THE

Supreme Court of the United States

OCTOBER TERM 1959

Docket No. 218

In the Matter of WALTER O. ESTES

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATE BAR OF MICHIGAN,
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SUBJECT INDEX

	Page
I. Integration of the State Bar of Michigan and Establishment of Rules by the Supreme Court of the State of Michigan Concerning the State Bar of Michigan	2-5
II. Counter-Statement of Facts	6-9
III. Argument	10-15

TABLE OF AUTHORITIES CITED

Cooley, Const. Lim. 353	14
Dartmouth College Case	13
Davidson v. New Orleans, 96 U. S. 97 (XXIV, 616)	14
Ex Parte Wall, 107 U. S. 265, 27 L. Ed. 552, 2 S. Ct. 569	12
Michigan Public Acts of 1935, Act No. 58, being C. L. 1948, Secs. 691.51 and 691.52, M. S. A. Secs. 27.101 and 27.102	2
Murray v. Hoboken Land and Improvement Co., 18 How. 272 (59 U. S. XV, 372)	14
Theard v. United States of America, 354 U. S. 278, 77 S. C. 1274, 1 L. Ed. 2nd 1342	11

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Now comes the State Bar of Michigan and moves the Court that the Petition for Writ of Certiorari filed herein by Walter O. Estes be dismissed on the grounds that said Petition does not present a substantial Federal question and that the opinion of the Supreme Court of the State of Michigan rests on an adequate non-federal basis (Revised Rules of the Supreme Court of the United States, Rule 16, Section 1, sub-section (b)).

I.

INTEGRATION OF THE STATE BAR OF MICHIGAN AND ESTABLISHMENT OF RULES BY THE SUPREME COURT OF THE STATE OF MICHIGAN CONCERNING THE STATE BAR OF MICHIGAN

The State Bar of Michigan was created by Act No. 58, Michigan Public Acts of 1935, being Michigan Compiled Laws of 1948, Sections 691.51 and 691.52, and being Michigan Statutes Annotated Section 27.101 and 27.102, as follows:

"An Act to create the State Bar of Michigan; and to authorize the Supreme Court to provide for the organization, regulation and rules of government thereof.

The People of the State of Michigan enact: 691.51 State Bar of Michigan; Creation

Section 1. There is hereby created an association to be known as the State Bar of Michigan, the membership of which shall consist of all persons in the state now or hereafter regularly licensed to practice law in this state.

691.52 Same; Organization and Regulation; Dues; Discipline; Publication of Rules.

Section 2. The Supreme Court is hereby authorized to provide for the organization and regulation of the State Bar of Michigan; to provide rules and regulations concerning the conduct and activities of the association and its members; the schedule of membership dues therein, non-payment of which shall be ground for suspension, the ethical standards to be observed in the practice of law, and the discipline, suspension or disbarment of association members. Under such regulations and restrictions

as the Supreme Court may prescribe, the power of subpoena may be conferred upon the association or its officers and committees for the purpose of aiding in the cases of discipline, suspension or disbarment; the rules promulgated by the Supreme Court to be published in the Michigan Reports and advance sheets thereof."

Pursuant thereto, the Supreme Court of the State of Michigan adopted certain rules concerning the State Bar of Michigan, which rules have been amended by the Supreme Court of the State of Michigan from time to time, including a Rule No. 15 with reference to procedures involving discipline of attorneys and reinstatement of attorneys whose license to practice has been suspended. Rule No. 15 consists of thirty-three (33) Sections setting forth detailed procedure with reference to the appointment of Grievance Committees for various districts in the State of Michigan and the procedure to be followed in the filing of Requests for Investigation with reference to attorneys whose professional conduct has been challenged. In summary, Rule No. 15, after providing for appointment of Grievance Committees in various districts in Michigan, makes provision for a preliminary inquiry by a Grievance Committee in the event of a charge of misconduct against an attorney to determine whether or not the Grievance Committee will hear a formal complaint. In the event the Grievance Committee decides to hear a formal complaint, the formal complaint is prepared for signature by the Grievance Administrator of the State Bar of Michigan, who at the time concerned herein was the Executive Secretary of the State Bar of Michigan. The respondent attorney then is served with a copy of such formal complaint, together with a Notice of Hearing thereon, whereupon he has a duty to file a written Answer to the formal complaint within ten (10) days after such service upon

him. Adequate provision is made for respondent to be represented by counsel, provided the counsel enter a formal appearance on or before the date fixed for the hearing of the matter.

After conclusion of its hearings, the Grievance Committee compiles a formal report with reference to the evidence heard by the Committee, together with its findings of fact, together with its recommendation as to any discipline which, in the opinion of the Committee, should be imposed upon the respondent.

In the event the suggested discipline as set forth in the report of the Grievance Committee is more than a private reprimand, then provision is made for the filing of the report with a Circuit Court in the State of Michigan and a hearing of the matter by three (3) Circuit Judges sitting *en banc*, if contested, or by one Circuit Judge if not contested.

The three Circuit Judges thereupon hear the matter and may either adopt the recommendation of the Grievance Committee or may determine such other discipline as may be available under the Michigan Supreme Court Rules concerning the State Bar of Michigan. The order of such three Circuit Judges is appealable to the Supreme Court of the State of Michigan for further review.

It is submitted that the Rules concerning the State Bar of Michigan as promulgated by the Supreme Court of the State of Michigan contain extremely adequate protective measures with reference to rights of a respondent so far as the "due process" clause of the Constitution may be applicable. We particularly point out that any formal complaint against a respondent must be in writing, that he be served with a copy thereof in advance of a hearing, that a hearing be held, that the hearing be before a repre-

sentative group of his fellow attorneys constituting the Grievance Committee for the applicable district, that in the event a majority of the members of such Grievance Committee recommend discipline then such recommendation is reviewed by Commissioners of the State Bar of Michigan and, if approved by them, the matter is brought on for a further hearing before three Circuit Judges sitting *en banc*, who review the nature of the evidence presented and the findings of fact, which Circuit Judges thereupon may return the file to the Grievance Committee for further findings of fact if they believe that further evidence should be presented. The determination of such three Circuit Judges as to the nature of the discipline to be imposed thereupon is incorporated in a written order from which the respondent has a right to appeal to the Supreme Court of the State of Michigan.

The State Bar of Michigan respectfully submits that it is justly proud of the eminently-fair Grievance procedures as established in the Rules issued by the Supreme Court of the State of Michigan. These Rules are unusually-protective as to the rights of a respondent in that he has, not merely one hearing, but a series of hearings, commencing with a hearing before a group of his fellow attorneys, proceeding thence to a hearing before three Circuit Judges sitting *en banc* and with the additional protection of a right of appeal to the Supreme Court of the State of Michigan. We submit that this is most complete "due process".

II

COUNTER-STATEMENT OF FACTS

At this point, we do not wish to burden the Court with a detailed challenge of the use of words or implications in the statement of facts contained in the Petition for Writ of Certiorari. We do wish to call the attention of the Court to the matters originally concerned in this proceeding. Various statements were made by the appellant in various Briefs, which were prepared by the appellant and filed by the appellant in the Supreme Court for the State of Michigan, including the following from many of his statements:

> "Therefore, it appears that the Commissioner of Insurance, the Attorney General *and the Trial Court* have sought to override the Federal Constitution and under the Constitution of the State of Michigan. They have ignored the laws as to jurisdiction, as to validity of contracts, as to liabilities for assessments, as to making assessments. They have sought to confiscate the property of appellants without a hearing on the merits; they have denied appellants the equal protection of the law; they have sought to litigate without notice or an opportunity to introduce evidence; THEY HAVE SOUGHT TO TRICK THE APPELLANTS OUT OF THEIR DEFENSES TO AN UNLAWFUL CLAIM; *they have attempted to bypass all requirements of due process of law by frauds, misrepresentations, concealments, and suppression.* This court cannot honor such deplorable and reprehensible proceedings on the part of state offices AND state officers, and especially when such officers are the Commissioner of Insurance, the Attorney General *and a Circuit Judge.*" (Italics ours.)

"*The Trial Court in this case has violated every rule, in the books of sportsmanship, fair play, due process, fair trial, equal protection of the law, sanctity of contracts, duty of officers, honor and respect of the law of the land.* He would shield and protect those who have violated the insurance laws of the state and punish those who were supposed to have been protected by those laws; he would overlook the flagrant disregard of the insurance laws by the Commissioner of Insurance and the Attorney General and over-reach his own authority and jurisdiction, yes, even violate the fundamental law of the land, the statutes and canons of judicial ethics, in his zeal to punish parties who are legally entitled to the protection of those officers and the court *he would put the honor and reputation of the Court on the block in obvious violation of his oath of office*, when by simply following the rules of law, principles of justice and the principles of fair play, he could help so much to place the court on the pedestal of high respect where it must be kept if our system is to work; * * *" (See Record on Appeal in the State of Michigan in the Supreme Court, pages 28, 29, 30 and 31.) (Italics ours.)

"The court, even in the face of the charges of fraud and concealment, denied appellants the right to intervene and assured them that the Commissioner of Insurance and the Attorney General were impartial, state officials who would protect appellants, who were charged with the duty and responsibility of protecting the interests of appellants. This court would not permit appellants to intervene, to protect their own interests, but, after lulling appellants into a feeling of security under the 'protection' of the Commissioner of Insurance the Attorney General, it is certainly to hold the appellants liable for the failure to perform on the part of those two state officials who do not deny that they have been continually practicing fraud, mis-

representation and fraudulent concealment while this court patted appellants on the head and assurred them that these two defrauding state officials were to be trusted and relied upon to do their duty. Is there any basis to this court's holding as to official duties in the premises?" (See Record on Appeal in the State of Michigan in the Supreme Court, page 38.)

"Under such circumstances it is clear that the trial court was not seriously looking for a way to assist appellant. The law, if properly applied to the facts, would have shown that appellant was entitled to relief, but the court failed and refused to follow the law; rather, THE COURT ERRED IN REFUSING TO APPLY THE LAW and IN ARBITRARILY TAKING A POSITION CONTRARY TO LAW. Its DISCRETION DID NOT EXTEND ITS AUTHORITY BEYOND THE LAW, BUT ONLY TO THE ENFORCEMENT OF THE LAW. ITS FAILURE TO HONOR THE LAW as to contracts, forfeitures, public policy, jurisdiction, due process of law, clean hands, property law, statute of frauds and the general insurance laws are CLAIMED BY APPELLANT TO CONSTITUTE AN ABUSE OF DISCRETION." (See Record on Appeal; in the State of Michigan in the Supreme Court, pages 66 and 67).

It is noted that Mr. Estes charged in his Briefs, as filed with the Supreme Court of the State of Michigan, that various conspiracies existed involving the Supreme Court of the State of Michigan, the Attorney General of the State of Michigan, the Michigan Commissioner of Insurance, a Trial Judge and several attorneys.

Contrary to the repeated assertions of the appellant, the complainant in this matter was the State Bar of Michigan, the formal complaint having been filed by its

Executive Secretary, the same being contained in the Record on Appeal in the State of Michigan in the Supreme Court pages 10, 11, 12, 13 and 14. Contrary to the repeated assertions of the appellant, the complainant in this matter was not and has never been the Supreme Court of the State of Michigan.

Although the appellant did not file an Answer within the time required under the Rules concerning the State Bar of Michigan, he subsequently was permitted to file a delayed Answer.

The appellant made no request that he be represented by counsel, nor did any counsel file an appearance for the appellant prior to the time of hearing before the Grievance Committee for the applicable district as required by the Rules concerning the State Bar of Michigan. The appellant delayed mentioning the possibility of being represented by counsel until the Grievance Committee had convened and opened the hearing itself.

The remainder of the proceedings were in accordance with the Rules concerning the State Bar of Michigan as adopted by the Supreme Court of the State of Michigan and as amended from time to time, as outlined above.

III.

ARGUMENT

It appears that the appellant claims that he should have been accorded a jury trial and other procedures accorded to persons accused of crime. He further appears to claim that various procedural statutes of the State of Michigan pertaining to trials are required by the Constitution of the United States to be followed in all matters of grievances against an attorney. In substance, the appellant appears to challenge the right of the Supreme Court of the State of Michigan to require that original hearings with reference to charges of unprofessional conduct be held before Grievance Committees of fellow attorneys rather than in a Courtroom before a judge and a jury, even though there be provision for subsequent hearing in Court.

We submit that these concepts on the part of the appellant with reference to the manner of conducting hearings on charges of unprofessional conduct are incorrect. Without undue elaboration in this argument, we wish to call to the Court's attention the following reasons that the appellant's concepts as contained in his Petition for Writ of Certiorari are not correct and by reason of which said Petition for Writ of Certiorari should be denied:

1. The hearing conducted before a Grievance Committee, consisting of fellow members of the Bar, is not an adversary proceeding but is in the nature of an investigation. The State Bar of Michigan does not in such proceedings attempt to have attorneys suspended or disbarred but attempts to bring to the attention of the members of the Grievance Committee, any and all circumstances pertaining to the applicable conduct of a respondent, regardless of whether it be favorable or unfavorable to the respondent's position in the matter. These hearings are con-

ducted as much for the protection of a respondent as for the protection of a member of the public in the event of an individual complainant.

2. A principle frequently enunciated both in decisions of this Court and in the Courts of the States is that a Court must have jurisdiction over the conduct of its officers and to determine what persons shall be entitled to practice as attorneys before such Court as officers of that Court. In this connection, it is noted that disbarment of an attorney by the Courts of a state does not necessarily indicate that such attorney automatically is disbarred to practice before such Federal Courts in which he previously may have been licensed to practice (See *Theard v. United States of America*, 354 U. S. 278, 77 S. Ct. 1274, 1 L. Ed. 2nd 1342). Likewise, disbarment of an attorney to practice before a Federal Court does not necessarily result in disbarment from license to practice as an officer of a Court of a state, except as the matter independently may be determined by the Courts of that state. In accordance with this principle, the Supreme Court of the State of Michigan has an inherent power to determine what persons may be listed on the roster of attorneys licensed to practice in the Courts of the State of Michigan. This inherent power of the Supreme Court of the State of Michigan is a power remaining in the State and does not present a substantial federal question as to the manner in which it be exercised.

3. The appellant has been accorded "due process of law" under the provisions of the Rules of the Supreme Court of the State of Michigan concerning the State Bar of Michigan, which Rules have been in effect for nearly twenty-four (24) years and pursuant to which many hundreds of matters have been heard and determined in which there were charges of unprofessional conduct on the part of an attorney. In that con-

nection, we wish to remind the Court of the case of *Ex Parte Wall*, 107 United States 265, 27 L. Ed. 552, 2 Supreme Court 569, in which this Court enunciated the following principles which continue to be applicable:

"As held by the Supreme Court of Tennessee in *Fields v. State (supra)*, and the same view is expressed in other cases, the constitutional privilege of trial by jury for crimes does not apply to prevent the courts from punishing its officers for contempt or from removing them in proper cases. Removal from office for an indictable offense is no bar to an indictment. The proceeding is, in its nature, civil, and collateral to any criminal prosecution by indictment. The proceeding is not for the purpose of punishment, but for the purpose of preserving the courts of justice from the official ministration of persons unfit to practice in them. Undoubtedly, the power is one that ought always to be exercised with great caution; and ought never to be exercised except in clear cases of misconduct, which affect the standing and character of the party as an attorney. But when such a case is shown to exist, the courts ought not to hesitate, from sympathy for the individual, to protect themselves from scandal and contempt and the public from prejudice, by removing grossly improper persons from participation in the administration of the laws. The power to do this is a rightful one; and, when exercised in porper cases, is no violation of any constitutional provision.

"'It is contended, indeed that a summary proceeding against an attorney to exclude him from the practice of his profession on account of acts for which he may be indicted and tried by a jury, is a violation of the Fifth Amendment of the Constitution, which forbids the depriving of any person of life, liberty or property without due process of law. But the action of the court, in cases within its jurisdiction, is due process of law.

"It is a regular and lawful method of proceeding, practiced from time immemorial. Conceding that an attorney's calling or profession is his property, within the true sense and meaning of the Constitution, it is certain, that in many cases, at least, he may be excluded from the pursuit of it by the summary action of the court of which he is an attorney. The extent of the jurisdiction is a subject of fair judicial consideration. That it embraces many cases in which the offense is indictable, is established by an overwhelming weight of authority. This being so, the question whether a particular class of cases of misconduct is within its scope, cannot involve any constitutional principle.

"It is a mistaken idea that due process of law requires a plenary suit and a trial by jury, in all cases where property or personal rights are involved. The important right of personal liberty is generally determined by a single judge, on a writ of *habeas corpus*, using affidavits or depositions for proofs, where facts are to be established. Assessments for damages and benefits occasioned by public improvements are usually made by commissioners in a summary way. Conflicting claims of creditors, amounting to thousands of dollars, are often settled by the courts on affidavits or depositions alone. And the courts of chancery, bankruptcy, probate and admiralty administer immense fields of jurisdiction without trial by jury. In all cases, that kind of procedure is due process of law, which is suitable and proper to the nature of the case, and sanctioned by the established customs and usages of the courts. 'Perhaps no definition,' says Judge Cooley, 'is more often quoted than that given by Mr. Webster in the *Dartmouth College Case*: "By the law of the land is most clearly intended the general law; a law which hears before it condemns; which proceeds upon inquiry and renders judgment only after trial. The meaning is that every citizen shall hold his life, liberty, property

and immunities, under the protection of the general rules which govern society.'" *Cooley, Const. Lim.*, 353.

"The question what constitutes due process of law within the meaning of the Constitution, was much considered by this court in the case of *Davidson v. New Orleans*, 96 U. S. 97 (XXIV, 616); and Mr. Justice Miller, speaking for the court, said: 'It is not possible to hold that a party has, without due process of law, been deprived of his property, when, as regards the issues affecting it, he has by the laws of the State, a fair trial in a court of justice, according to the modes of proceeding applicable to such a case.' And, referring to the case of *Murray v. Hoboken Land and Improvement Co.*, 18 How., 272 (59 U. S. XV, 372), he said: 'An exhaustive judicial inquiry into the meaning of the words "due process of law," as found in the 5th Amendment, resulted in the unanimous decision of this court, that they do not necessarily imply a regular proceeding in a court of justice, or after the manner of such courts.'

"We have seen that, in the present case, due notice was given to the petitioner, and a trial and hearing was had before the court, in the manner in which proceedings against attorneys, when the question is whether they should be struck off the roll, are always conducted.

"We think that the court below did not exceed its powers in taking cognizance of the case in a summary way, and that no such irregularity occurred in the proceeding as to require this court to interpose by the writ of mandamus. The writ of mandamus is, therefore, refused, and the rule to show cause is discharged."

It is obvious upon a review of the record on appeal before the Supreme Court of the State of Michigan and its carefully-considered opinion, as set forth in Petitioner's

Exhibit Item I on pages 17 through 26 inclusive of the Petition for Writ of Certiorari, the appellant was accorded due process, hearings having been had within the provisions of the Rules of the Michigan Supreme Court concerning the State Bar of Michigan, both before a Grievance Committee consisting of Petitioner's fellow attorneys, before three Circuit Judges of the State of Michigan and by appeal to the Supreme Court of the State of Michigan, all in the manner "in which proceedings against attorneys, when the question is whether they should be struck off the roll, are always conducted" within the State of Michigan.

It therefore appears conclusive that the appellant's Petition for a Writ of Certiorari does not present a substantial federal question and that the opinion of the Supreme Court of the State of Michigan rests on an adequate non-federal basis.

Wherefore, the State Bar of Michigan prays that the appellant's petition for a Writ of Certiorari herein be denied.

STATE BAR OF MICHIGAN,
By ERNEST C. WUNSCH,
Second Vice President, State Bar of Michigan, a Member of the Bar of the Supreme Court of the United States,

By J. CAMERON HALL,
General Counsel, State Bar of Michigan,

By WILFRED H. ERWIN,
Counsel for the State Bar of Michigan in the Sixth Congressional District.

Dated: July 31, 1959.